



## FISCAL MEMORANDUM

### HB 2147 - SB 2400

March 16, 2022

**SUMMARY OF BILL AS AMENDED (016005):** Increases the age of a victim whose testimony the court may allow to be taken outside the courtroom by means of two-way closed-circuit television from 13 years of age or younger to under 18 years of age.

Adds human trafficking offenses to those for which a court is required to extend an order of protection for a definite period of time if the allegation is proved by a preponderance of the evidence.

Requires the Department of Children's Services (DCS) to develop a policy to assist foreign national children suspected of being a victim of human trafficking. Requires DCS to develop, maintain and distribute to juvenile justice agencies, assessment tools to screen system-involved children at risk of human trafficking.

Prohibits prosecution for the offense of prostitution as a juvenile or as an adult, for a victim of trafficking for a commercial sex act under the age of 18 years of age.

Provides exception to certain restrictions on expunction for a victim of a human trafficking offense, at no cost to the individual.

Enhances the penalty for involuntary servitude, from a Class B felony to a Class A felony, if the victim was a minor.

Enhances the penalty for trafficking for forced labor or services, from a Class C felony to a Class A felony, if the victim was a minor.

Increases the age of a victim for Class A felony trafficking for commercial sex act, from a child under 15 years of age to a minor.

Enhances the penalty for promoting prostitution, from a Class B felony to a Class A felony, if the victim is a minor, and from a Class D felony to a Class A felony, if the person has an intellectual disability.

Enhances the penalty for patronizing prostitution, from a Class A misdemeanor to a Class B felony when the subject of the offense is a law enforcement officer posing as a minor.

## **FISCAL IMPACT OF BILL AS AMENDED:**

### **Increase State Expenditures – \$36,700 Incarceration**

### **Decrease Local Expenditures – \$500/FY22-23 and Subsequent Years**

Assumptions for the bill as amended:

#### *Involuntary Servitude*

- Based upon information provided by the Department of Correction (DOC), there has been zero admissions in each of the last 10 years for the Class B felony offense under Tenn. Code Ann. § 39-13-307 for involuntary servitude.
- There will not be a sufficient number of Class A felony prosecutions for state government to experience any significant increase in revenue or expenditures.

#### *Trafficking for Forced Labor or Services*

- Pursuant to Tenn. Code Ann. § 39-13-308, trafficking for forced labor or services is a Class C felony offense.
- The proposed legislation enhances the penalty to a Class A felony if the victim was a minor.
- Based upon information provided by the DOC, there has been 0.1 admissions in each of the last 10 years for the Class C felony offense under Tenn. Code Ann. § 39-13-308 for trafficking for forced labor or services.
- There will not be a sufficient number of Class A felony prosecutions for state government to experience any significant increase in revenue or expenditures.

#### *Trafficking for a Commercial Sex Act*

- Pursuant to Tenn. Code Ann. § 39-13-309, trafficking for a commercial sex act is a Class B felony offense.
- The penalty is enhanced to a Class A felony if the victim is under 15 years of age or where the offense occurs on the grounds or facilities or within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park.
- Based upon information provided by the DOC, there has been 2.2 admissions in each of the last 10 years for the Class B felony offense under Tenn. Code Ann. § 39-13-309 for trafficking for a commercial sex act.
- It is reasonably assumed that 10 percent or 0.22 (2.2 x 10.0%) of such admissions will be classified as a Class A felony under the proposed legislation.
- Pursuant to Tenn. Code Ann. § 40-35-501(aa)(2)(C), a person who commits trafficking for a commercial sex act, on or after July 1, 2021 is required to serve 100 percent of the sentence imposed by the court undiminished by any sentence reduction credits.
- The average sentence for trafficking for a commercial sex act is 10 years.
- The average time served for a Class A felony offense is 13.79 years.

- This analysis estimates the highest cost for admissions in the next 10 years; therefore, any additional time added by the proposed legislation resulting in sentences exceeding 10 years in length surpass the window of this analysis.

#### *Promoting Prostitution*

- Pursuant to Tenn. Code Ann. § 39-13-515, promoting prostitution is punishable as trafficking for a commercial sex act under Tenn. Code Ann. § 39-13-309 if the person being promoted is less than 18 years old. Trafficking for a commercial sex act is a Class B felony offense.
- It is reasonably assumed any increase in incarceration costs associated with promoting prostitution for a person less than 18 years old has been accounted for within the increase in expenditures for trafficking for a commercial sex act.
- Pursuant to Tenn. Code Ann. § 39-13-515, promoting prostitution is a Class D felony offense if the victim has an intellectual disability.
- Based upon information provided by the DOC, there has been zero admissions in each of the last 10 years for the Class D felony offense under Tenn. Code Ann. § 39-13-515 for promoting prostitution where the victim has an intellectual disability.
- There will not be a sufficient number of Class A felony prosecutions for state government to experience any significant increase in revenue or expenditures.

#### *Patronizing Prostitution*

- Pursuant to Tenn. Code Ann. § 39-13-514, patronizing prostitution is a Class A misdemeanor. The proposed legislation enhances the penalty to be punishable as trafficking for a commercial sex act under Tenn. Code Ann. § 39-13-309 if the subject of the offense is a law enforcement officer posing as a minor. Trafficking for a commercial sex act is a Class B felony offense.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 6 Class A misdemeanor convictions of patronizing prostitution in each of the last 5 years.
- This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are 60 convictions (6 / 10.0%) per year for such Class A misdemeanors.
- It can be reasonably assumed that one percent or 0.6 (60 x 1.0%), of such convictions will be classified as a Class B felony under this legislation.
- The average time served for a Class B felony offense is 3.27 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next ten-year period:

| Increase in State Expenditures |             |
|--------------------------------|-------------|
| Amount                         | Fiscal Year |
| \$ 11,200                      | FY22-23     |
| \$ 22,400                      | FY23-24     |
| \$ 33,500                      | FY24-25     |
| \$ 36,500                      | FY25-26     |
| \$ 36,500                      | FY26-27     |
| \$ 36,700                      | FY27-28     |
| \$ 36,500                      | FY28-29     |
| \$ 36,500                      | FY29-30     |
| \$ 36,500                      | FY30-31     |
| \$ 36,700                      | FY31-32     |

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring costs increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$36,700.
- It is assumed that an individual convicted of a Class A misdemeanor offense will spend an average of 15 days in a local jail.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$60.69.
- The recurring mandatory decrease in expenditures to local governments is estimated to be \$546 (0.6 convictions x \$60.69 x 15) in FY22-23 and subsequent years.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

#### *Expunctions*

- The proposed legislation requires a victim of a human trafficking offense who applies for expunction to be at no cost to the individual.
- Pursuant to Tenn. Code Ann. § 8-21-401(d)(3), the court clerk is authorized to charge a fee up to \$100 for expungements.
- Public Chapter 200 of 2019 removed the \$180 fee for an individual petitioning the court for an expunction of certain criminal offenses and the \$350 fee for a defendant applying for expunction of an offense following the completion of a diversion program.
- There will not be a significant change in the number of petitions for expunction filed for state government to experience any change in revenue or expenditures.
- Based on information provided by the DCS, the proposed legislation will have no impact on the operations of the Department; therefore, any fiscal impact to DCS is estimated to be not significant.

- There will not be a sufficient change in the number of prosecutions for state or local government to experience any significant change in revenue or expenditures.
- Any impact to the court system as a result of the proposed legislation is estimated to be not significant.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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